

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

JODY WAYNE MILLER,)	
)	
Plaintiff,)	
)	
VS.)	No. 17-1118-JDT-cgc
)	
TROY KLYCE, ET AL.,)	
)	
Defendants.)	

ORDER PARTIALLY DISMISSING COMPLAINT AND
DIRECTING THAT PROCESS BE ISSUED AND SERVED
ON THE REMAINING DEFENDANT

On June 1, 2017, Plaintiff Jody Wayne Miller, an inmate at the Morgan County Correctional Complex in Wartburg, Tennessee, filed a *pro se* complaint pursuant to 42 U.S.C. § 1983 and a motion seeking leave to proceed *in forma pauperis* in the U.S. District Court for the Middle District of Tennessee. (ECF Nos. 1 & 2.) On June 22, 2017, U.S. District Judge Waverly D. Crenshaw, Jr. granted leave to proceed *in forma pauperis*, assessed the civil filing fee pursuant to the Prison Litigation Reform Act, 28 U.S.C. § 1915(a)-(b), and transferred the case to this district where venue is proper. (ECF No. 4.) The Clerk shall record the Defendants as Crockett County; Crockett County Sheriff Troy Klyce; and Candice Haynes, who is identified as the former Chief Jailer at the Crockett County Jail (Jail).¹

¹ The complaint also names a “Jane Doe” nurse as a defendant. However, service of process cannot be made on unidentified parties, and the filing of a complaint against such defendants does not toll the running of the statute of limitation against those parties. *See Cox v. Treadway*, 75 F.3d 230, 240 (6th Cir. 1996). If Plaintiff seeks to sue any other individual, he must identify that person and file a new complaint within the applicable statute of limitations.

Miller alleges in the complaint that he was arrested on June 15, 2016, and taken to the Jail. (ECF No. 1 at 4.) A week prior to his arrest, Miller had been injured in an accident in which he suffered a broken collar bone as well as other, less serious, injuries. (*Id.*) He alleges that upon his arrival at the Jail, he told Defendant Haynes that he had an appointment to have surgery at a local hospital. (*Id.*) However, Haynes allegedly told Miller they did not take people to the hospital from the Jail because there were not have enough employees to do so. (*Id.* at 5.) When Miller told Haynes that his collar bone was broken and he was in a lot of pain, she allegedly told him that was not her concern. (*Id.*) Although Miller told Haynes he had been prescribed medication for the pain, he was not given that medication. (*Id.*)

Miller further alleges that an unidentified nurse, who worked at the Jail only once a week, refused his request for assistance in getting to the hospital for surgery, refused to provide him with his prescribed pain medication, and refused to adequately examine his injury. (*Id.* at 5-6.) Although she ultimately provided him with two Ibuprofen daily, Miller alleges it had no effect on his pain. (*Id.* at 6.)

Miller asserts that when he received no help from Defendant Haynes or the nurse, he sent a note to Sheriff Klyce but received no reply. (*Id.*) Miller then filed two grievances seeking medical help and transportation to the hospital for surgery. (*Id.*) He alleges the only response to the grievances was from Defendant Haynes, who told him that he had better stop trying to cause trouble for the Jail. (*Id.* at 7.) Miller also states that he also received no response to a letter he sent to the County Executive of Crockett County. (*Id.* at 7-8.)

Miller alleges he remained in the Jail for two months without treatment, during which his collar bone healed crooked, twisting his shoulder into an awkward position and continuing to cause

him pain. (*Id.* at 7.) He states that after he was transferred into the custody of the Tennessee Department of Correction, his collar bone had to be re-broken and surgery done to repair it. (*Id.*) Miller asserts that he still has some pain because the bone will never be perfectly aligned due to the delay in treatment at the Jail. (*Id.*)

Miller seeks both compensatory and punitive damages.

The Court is required to screen prisoner complaints and to dismiss any complaint, or any portion thereof, if the complaint—

- (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or
- (2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A(b); *see also* 28 U.S.C. § 1915(e)(2)(B).

In assessing whether the complaint in this case states a claim on which relief may be granted, the standards under Fed. R. Civ. P. 12(b)(6), as stated in *Ashcroft v. Iqbal*, 556 U.S. 662, 677-79 (2009), and in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007), are applied. *Hill v. Lappin*, 630 F.3d 468, 470-71 (6th Cir. 2010). “Accepting all well-pleaded allegations in the complaint as true, the Court ‘consider[s] the factual allegations in [the] complaint to determine if they plausibly suggest an entitlement to relief.’” *Williams v. Curtin*, 631 F.3d 380, 383 (6th Cir. 2011) (quoting *Iqbal*, 556 U.S. at 681). “[P]leadings that . . . are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.” *Iqbal*, 556 U.S. at 679; *see also Twombly*, 550 U.S. at 555 n.3 (“Rule 8(a)(2) still requires a ‘showing,’ rather than a blanket assertion, of entitlement to relief. Without some factual allegation in the complaint, it is hard to see

how a claimant could satisfy the requirement of providing not only ‘fair notice’ of the nature of the claim, but also ‘grounds’ on which the claim rests.”).

“A complaint can be frivolous either factually or legally.” *Hill*, 630 F.3d at 470 (citing *Neitzke v. Williams*, 490 U.S. 319, 325 (1989)). “Any complaint that is legally frivolous would *ipso facto* fail to state a claim upon which relief can be granted.” *Id.* (citing *Neitzke*, 490 U.S. at 328-29).

Whether a complaint is factually frivolous under §§ 1915A(b)(1) and 1915(e)(2)(B)(i) is a separate issue from whether it fails to state a claim for relief. Statutes allowing a complaint to be dismissed as frivolous give judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint’s factual allegations and dismiss those claims whose factual contentions are clearly baseless. Unlike a dismissal for failure to state a claim, where a judge must accept all factual allegations as true, a judge does not have to accept “fantastic or delusional” factual allegations as true in prisoner complaints that are reviewed for frivolousness.

Id. at 471 (citations and internal quotation marks omitted).

“*Pro se* complaints are to be held ‘to less stringent standards than formal pleadings drafted by lawyers,’ and should therefore be liberally construed.” *Williams*, 631 F.3d at 383 (quoting *Martin v. Overton*, 391 F.3d 710, 712 (6th Cir. 2004)). *Pro se* litigants, however, are not exempt from the requirements of the Federal Rules of Civil Procedure. *Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 1989); *see also Brown v. Matauszak*, 415 F. App’x 608, 612, 613 (6th Cir. Jan. 31, 2011) (affirming dismissal of *pro se* complaint for failure to comply with “unique pleading requirements” and stating “a court cannot ‘create a claim which [a plaintiff] has not spelled out in his pleading’” (quoting *Clark v. Nat’l Travelers Life Ins. Co.*, 518 F.2d 1167, 1169 (6th Cir. 1975))); *Payne v. Sec’y of Treas.*, 73 F. App’x 836, 837 (6th Cir. 2003) (affirming *sua sponte* dismissal of complaint pursuant to Fed. R. Civ. P. 8(a)(2) and stating, “[n]either this court nor the district court is required to create Payne’s claim for her”); *cf. Pliler v. Ford*, 542 U.S. 225, 231 (2004) (“District judges have

no obligation to act as counsel or paralegal to *pro se* litigants.”); *Young Bok Song v. Gipson*, 423 F. App’x 506, 510 (6th Cir. 2011) (“[W]e decline to affirmatively require courts to ferret out the strongest cause of action on behalf of *pro se* litigants. Not only would that duty be overly burdensome, it would transform the courts from neutral arbiters of disputes into advocates for a particular party. While courts are properly charged with protecting the rights of all who come before it, that responsibility does not encompass advising litigants as to what legal theories they should pursue.”).

Plaintiff filed his complaint pursuant to 42 U.S.C. §1983, which provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

To state a claim under § 1983, a plaintiff must allege two elements: (1) a deprivation of rights secured by the “Constitution and laws” of the United States (2) committed by a defendant acting under color of state law. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 150 (1970).

The complaint does not assert a valid claim against Crockett County. When a § 1983 claim is made against a municipality or county, the court must analyze two distinct issues: (1) whether the plaintiff’s harm was caused by a constitutional violation; and (2) if so, whether the governmental entity is responsible for that violation. *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 120 (1992).

A local government “cannot be held liable *solely* because it employs a tortfeasor—or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory.” *Monell v. Dep’t. of Soc. Servs.*, 436 U.S. 658, 691 (1978); *see also Searcy v. City of Dayton*, 38 F.3d 282, 286 (6th Cir. 1994); *Berry v. City of Detroit*, 25 F.3d 1342, 1345 (6th Cir. 1994). A municipality cannot be held responsible for a constitutional deprivation unless there is a direct causal link between a municipal policy or custom and the alleged constitutional deprivation. *Monell*, 436 U.S. at 691-92; *Deaton v. Montgomery Cnty., Ohio*, 989 F.2d 885, 889 (6th Cir. 1993). To demonstrate municipal liability, a plaintiff “must (1) identify the municipal policy or custom, (2) connect the policy to the municipality, and (3) show that his particular injury was incurred due to execution of that policy.” *Alkire v. Irving*, 330 F.3d 802, 815 (6th Cir. 2003) (citing *Garner v. Memphis Police Dep’t*, 8 F.3d 358, 364 (6th Cir. 1993)). “Where a government ‘custom has not received formal approval through the body’s official decisionmaking channels,’ such a custom may still be the subject of a § 1983 suit.” *Alkire*, 330 F.3d at 815 (quoting *Monell*, 436 U.S. at 690-91). The policy or custom “must be ‘the moving force of the constitutional violation’ in order to establish the liability of a government body under § 1983.” *Searcy*, 38 F.3d at 286 (quoting *Polk Cnty. v. Dodson*, 454 U.S. 312, 326 (1981) (citation omitted)). “[T]he touchstone of ‘official policy’ is designed ‘to distinguish acts of the *municipality* from acts of *employees* of the municipality, and thereby make clear that municipal liability is limited to action for which the municipality is actually responsible.’” *City of St. Louis v. Praprotnik*, 485 U.S. 112, 138 (1988) (quoting *Pembaur v. Cincinnati*, 475 U.S. 469, 479-80 (1986)). In this case, Miller’s complaint does not allege that he was injured by an unconstitutional policy or custom of Crockett County. Instead, it appears that Crockett County has been sued because it employs persons who may have violated his civil rights.

Miller also has no § 1983 claim against Defendant Klyce merely because of his position as the Sheriff of Crockett County. Under § 1983, “[g]overnment officials may not be held liable for the unconstitutional conduct of their subordinates under a theory of *respondeat superior*.” *Ashcroft v. Iqbal*, 556 U.S. at 676; *see also Bellamy v. Bradley*, 729 F.2d 416, 421 (6th Cir. 1984). Thus, “a plaintiff must plead that each Government-official defendant, through the official’s own official actions, violated the Constitution.” *Iqbal*, 556 U.S. at 676.

There must be a showing that the supervisor encouraged the specific instance of misconduct or in some other way directly participated in it. At a minimum, a § 1983 plaintiff must show that a supervisory official at least implicitly authorized, approved or knowingly acquiesced in the unconstitutional conduct of the offending subordinates.

Bellamy, 729 F.2d at 421 (citation omitted). A supervisory official who is aware of the unconstitutional conduct of his or her subordinates, but fails to act, generally cannot be held liable in his or her individual capacity. *Grinter v. Knight*, 532 F.3d 567, 575-76 (6th Cir. 2008); *Gregory v. City of Louisville*, 444 F.3d 725, 751 (6th Cir. 2006); *Shehee v. Luttrell*, 199 F.3d 295, 300 (6th Cir. 1999); *Lillard v. Shelby Cnty. Bd. of Educ.*, 76 F.3d 716, 727-28 (6th Cir. 1996). A failure to take corrective action in response to an inmate grievance or complaint ordinarily does not supply the necessary personal involvement for § 1983 liability. *See George v. Smith*, 507 F.3d 605, 609-10 (7th Cir. 2007) (“Ruling against a prisoner on an administrative complaint does not cause or contribute to the [constitutional] violation. A guard who stands and watches while another guard beats a prisoner violates the Constitution; a guard who rejects an administrative complaint about a completed act of misconduct does not.”).

For the foregoing reasons, the claims against Defendants Crockett County and Klyce are DISMISSED for failure to state a claim pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1).

Process will be issued for Defendant Haynes on Miller's claim for failure to provide adequate medical care.

It is ORDERED that the Clerk shall issue process for Defendant Haynes and deliver that process to the U.S. Marshal for service. Service shall be made on Defendant Haynes pursuant to Federal Rule of Civil Procedure 4(e) and Tennessee Rules of Civil Procedure 4.04(1) and (10), either by mail or personally if mail service is not effective. All costs of service shall be advanced by the United States.

It is further ORDERED that Plaintiff shall serve a copy of every subsequent document he files in this cause on the attorneys for Defendant Haynes or on the Defendant if she is unrepresented. Plaintiff shall make a certificate of service on every document filed. Plaintiff shall familiarize himself with the Federal Rules of Civil Procedure and this Court's Local Rules.²

Plaintiff shall promptly notify the Clerk, in writing, of any change of address or extended absence. Failure to comply with these requirements, or any other order of the Court, may result in the dismissal of this case without further notice.

IT IS SO ORDERED.

s/ **James D. Todd**
JAMES D. TODD
UNITED STATES DISTRICT JUDGE

² A copy of the Local Rules may be obtained from the Clerk. The Local Rules are also available on the Court's website at <https://tnwd.uscourts.gov/pdf/content/LocalRules.pdf>.